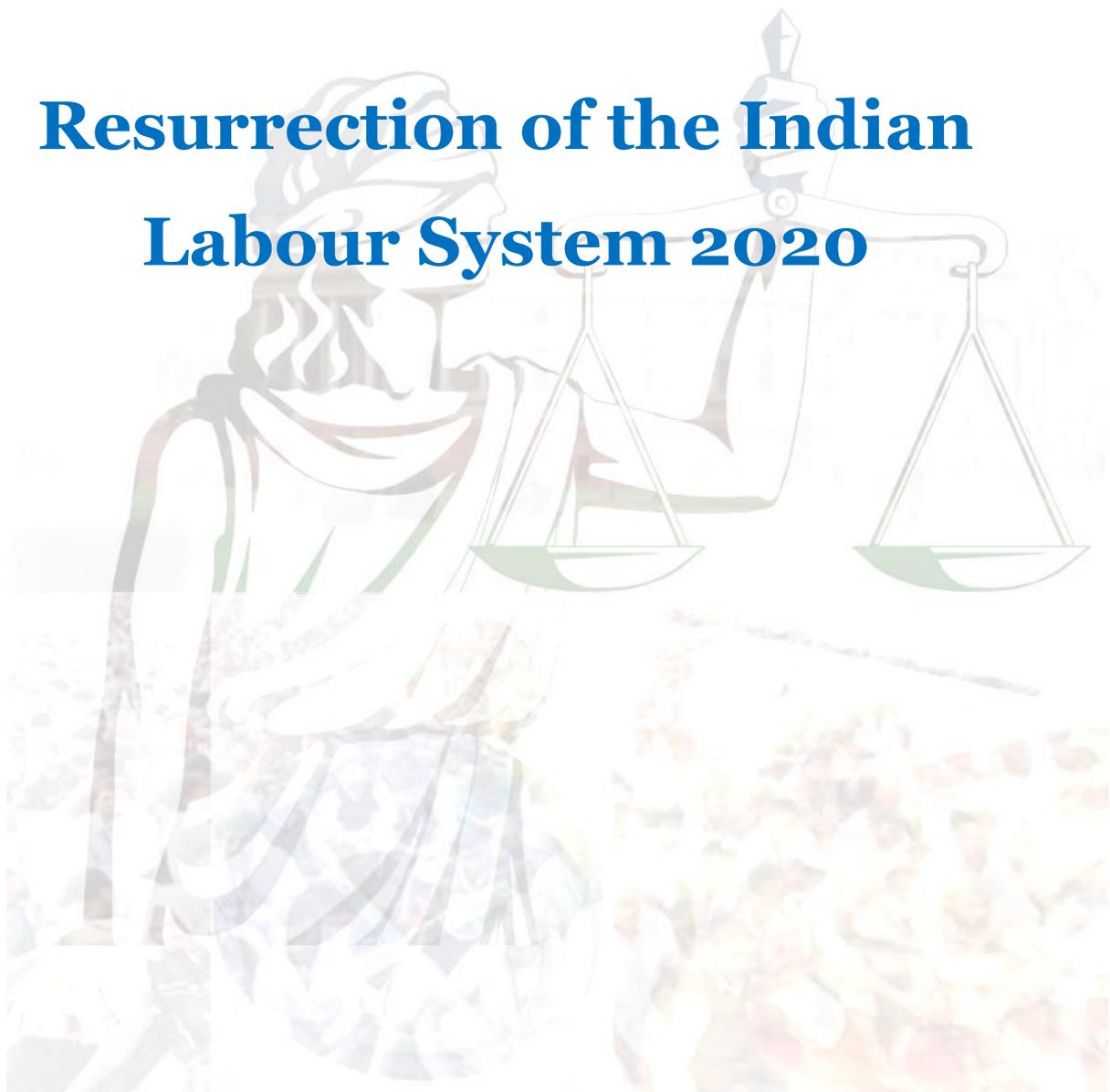




Resurrection of the Indian Labour System 2020



Written & Compiled By

Shreya Bhattacharya

Sr. Legal Associate at Replicon India

Table of Content

1. Introduction 3

2. The Limitation of the Current Labour System 3

3. Proposed Amendments4

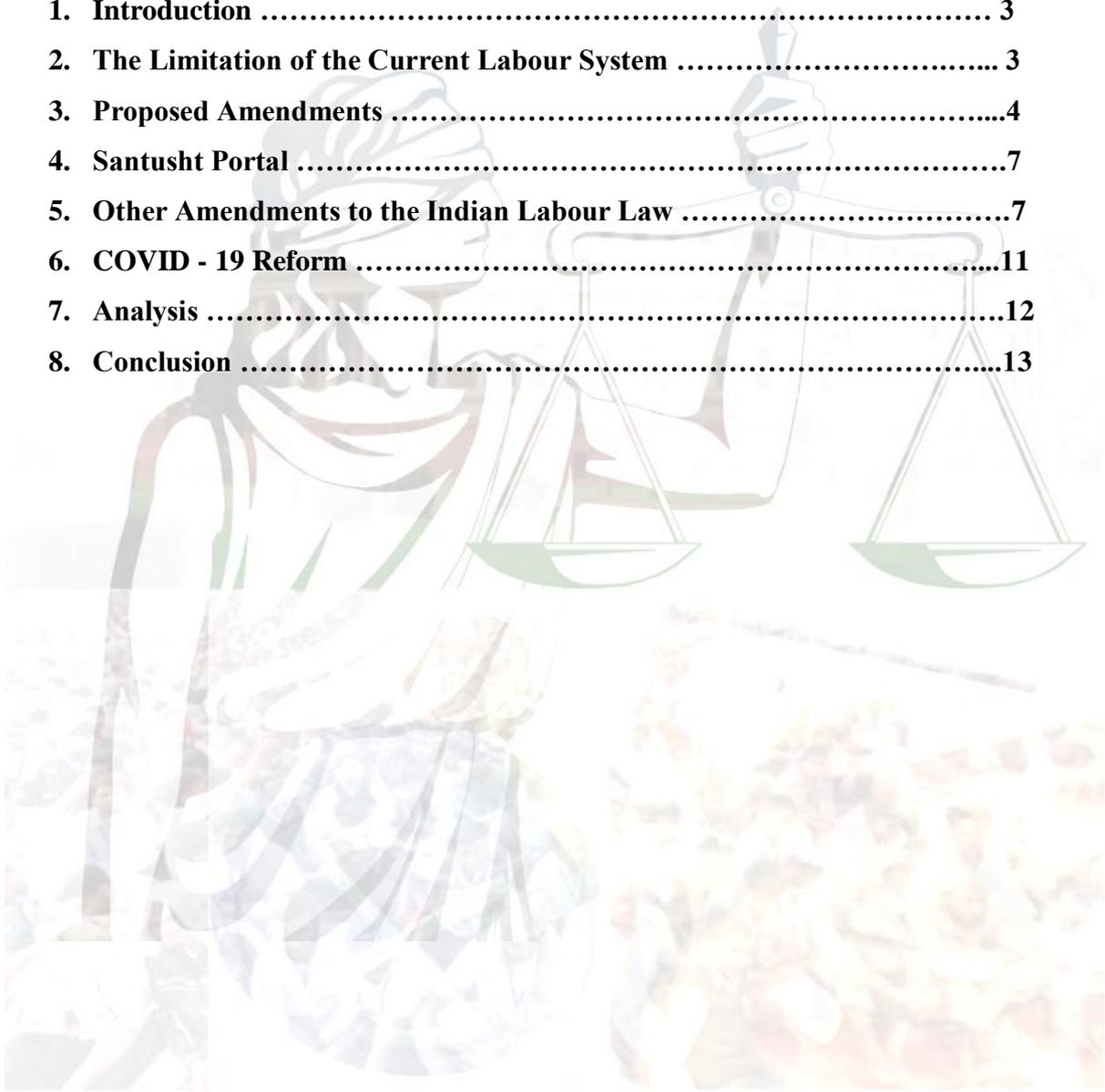
4. Santusht Portal7

5. Other Amendments to the Indian Labour Law7

6. COVID - 19 Reform11

7. Analysis12

8. Conclusion13



Introduction

Ever since India presented market reforms in the 1990s, an extensive list of international organisations, investors and general critics of government regulations have taken further steps with regard to the labour market and Industrial Relations System.

The year 2019 can be said to be a crucial year in relation to the employment law regime in India. The Indian government took several steps to abbreviate and justify the dated employment legislations, veritably in a bid to rise up in the index of ease of Doing Business in India.

Here, we shall look at some of the key impactful developments, and also what 2020 may have in store for India Labour Law in relation to the same.

The Limitation of Current Labour System

Firstly, because the introduction of labour market reforms is harmonizing to the liberalisation of the Indian economy – the significance of the latter can only fully be gained if the former is also completed.

Secondly, the overall insight is that India's labour laws and labour inspection system are quite hard and knowingly restrict the freedom of employers to reply to rapidly changing business conditions. Let us look at a few instances:

Chapter V-B of the [Industrial Disputes Act, 1947 \(the ID Act\)](#) requires industrial establishments employing 100 or more workers to seek prior consent from the government before economizing workers or closing down their establishments, and governments are cautious to authorize closure for fear of political unpopularity as these measures will result in at least short-term unemployment.

In the same way, the [Contract Labour \(Regulation and Abolition\) Act, 1970](#) (the Contract Labour Act) does not allow user enterprises to use contract labour at will to tackle uncertain demand for their products.

Third, the labour laws are ancient and many (reportedly 44 Central labour laws), lack regularity (differing definitions of same terms in different laws, such as “workman” or “wages”) and are

not in sync with present modest economic environment (all suitably clubbed under the term “core” labour law reforms).

The technical systems such as safeguarding registration/license and upkeep of registers and records (in physical forms) and submission of information under various labour laws are repetitive and exhausting. Employers henceforth seek liberalisation of review and labour administration system (governance reforms).

Proposed Modifications and Changes

There are over forty central laws and one hundred state laws which govern labour law in India. Designed at serving to stakeholders and hurrying growth, the government is designing a replacement labour legislation that might mix forty-four labour laws underneath four categories. Labour ministry has decided to amalgamate 44 labour laws into 4 categories mainly:

- Wages
 - Industrial relations
 - Social security
 - Safety, health and working conditions.
-
- The laws associated with Social Security, the Employees' Provident Fund and Miscellaneous Provisions Act, Employees' State Insurance Corporation Act, Maternity advantages Act, Building and different Construction staff Act and also the Employees' Compensation Act are united to make one Social Security law or code.
 - Varied industrial safety and welfare laws like the Factories Act, the Mines Act and also the Dock staff (Safety, Health and Welfare) Act, are amalgamated to make one class on industrial safety and welfare.
 - The Minimum Wages Act, the Payment of Wages Act, the Payment of Bonus Act, the Equal Remuneration Act to be combined.
 - The Labour Code on Industrial Relations to be combined with the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and also the Industrial Employment (Standing Orders) Act, 1946.

The planned new labour law can facilitate stakeholders to accelerate growth.

The Ministry of Labour and Employment ("Ministry") has proposed these four Codes to mix and contour the present labour law context in India:

Code on Wages, 2019 ("Wage Code") and Corresponding Rules

This code (which merges the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and also the Equal Remuneration Act, 1976) got Presidential acceptance on August 8, 2019. However, the Central Government is nonetheless to apprise the provisions of the aforementioned code. A number of the key changes introduced underneath the Wage Code are:

- Uniform definition of the term '**wages**': The term 'wages' is outlined to comprise all compensation which will be voiced in financial terms and lists down specific eliminations.
- Wide definition of the term "employer" and "employee": The Wage Code expands the definition of the term 'employer' to additionally comprise principal employers and contractors. This primarily permits contract staff to advance against both the principal leader and contractor to enforce their rights.
'Employee' additionally contains persons utilized at the executive and social control level. Hereinafter, service conditions of senior level workers are regulated by the provisions underneath the Wage Code. Given the Wage Code controls deductions created to associate employee's regular payment, this can additionally influence the regular payment structuring of such workers significantly with reference to their owed compensation.
- Floor Wage: The Minimum Wages Act, 1948, applies solely to specific employment and a few classes of workers. The Wage Code and also the minimum wages associated provisions would apply to all or any classes of employment/industries and workers. Underneath the Wage Code, the Central Government is allowed to mend the national minimum wages which would act as a platform for local government to set the minimum wages
- The draft rules to the Wage Code were revealed on the Ministry website tantalizing feedback from the general public till December 1, 2019. The first stage would be to validate the principles. Once complete, the Wage Code is expected to be brought into force.

Occupational Safety, Health and dealing Conditions Code, 2019 ("OSH Code")

The OSH Code pursues to manage health and safety needs of staff in establishments with ten or more staff and replace labour laws regarding safety, health and dealing conditions, like the Factories Act, 1948, and also the Contract Labour (Regulation and Abolition) Act, 1970. This code was introduced within the Lok Sabha in 2019 and is presently unfinished.

The main issue, trade unions have relates to agreements or in home-based production.

The Trade Unions across businesses might be enormously ungratified and anxious with this new code and can eventually be adamant on that being reviewed by department-related parliamentary commission.

The Industrial Relations Code, 2019 ("IR Code")

The Industrial Relations Code was introduced within the Lok Sabha in 2019 and is presently in the proposal stage. This code can hopefully replace and combine the Commercial Disputes Act, 1947, the Trade Unions Act, 1926 and also the Industrial Employment (Standing Orders) Act, 1946.

The Ministry is of the opinion that with the introduction of the concept of "fixed term employment" the planned Code can create a straightforward regulation for organizations to hire/fire employees based on necessity.

The Code on Social Security, 2019 ("Social Security Code")

This code intends to modify the Social Security laws. The same has been re-introduced within the Lok Sabha in 2019 and is currently in the proposal stage

It seeks to exchange the existing 9 Social Security laws, as well as the Employee Provident Fund (EPF) Act, the Workers State Insurance Act, 1948, and also the Maternity Profit Act, 1961.

The Ministry intends to make provisions with regards to Provident Fund in the Social Security Code. The proposed Social Security Code, amid different provisions additionally identifies "gig workers" and "platform workers". There is also a proposed Employees' Provident Fund and Miscellaneous Provisions (Amendment) Bill, 2019 which was circulated on August 23, 2019, seeking comments from the public until September 22, 2019.

At present, there is no clearness as to how these will be reconciled and what tactic will be used to address the doubts and uncertainties.

Santusht Portal

The Ministry of Labour and Employment has launched ‘Santusht portal’ to monitor the implementation of labour laws at the grassroots level.

The objective of ‘Santusht’ is to promote transparency, accountability, effective delivery of public services and implementation of policies, schemes of the Ministry of Labour and Employment at the grassroots level through constant monitoring.

Other Amendments to Indian Labor Law

Changes to The Payment of Gratuity Act, 1972

The Payment of Gratuity (Amendment) Act, 2018 which was effective from 29th March 2018 was made to ensure harmony among employees in the Private Sector and in Public Sector Undertakings/ Autonomous Organizations.

The Amendment stated that the private sector employees will be eligible to obtain an advanced amount of gratuity at par with their counterparts in the Government sector. An employee will be eligible to obtain gratuity if he/she has rendered constant service for at minimum five years with an organization and typically given at the time of retirement under certain terms and conditions.

After taking into deliberation the growing factors of inflation and wage concerning employees involved in the private sector, the Government decided that the entitlement of gratuity should also be revised in respect of employees who are covered under the Payment of Gratuity Act, 1972.

Changes to Industrial Employment (Standing Orders) Central Rules

Under the Industrial Employment (Standing Orders) Central Rules, 1946, “fixed term employment” was constrained only to the clothing manufacturing sector. These rules were amended to cover fixed term employment in all sectors.

Following through, the proposed Industrial Relation Code and the Social Security Code have included provisions to let companies to hire fixed-term employees for any period, as required. As a result of this, fixed-term workers are now entitled to the same aid as permanent workers including working hours, allowances, wages and other statutory benefits on a proportionate basis.

Changes to Karnataka Shops and Establishment Act in 2019

The Karnataka Shops and Establishment Act was amended in 2019. Below are the changes and new provisions to the Act:

- The employer shall employ additional staff in order to permit every employee to gain one day holiday in a week on rotation basis, and the specifics of every employee shall be displayed by the employer at a conspicuous place in the shop or commercial establishment.
- Every employer shall display details of the employees who are on holiday/leave on a daily basis in a conspicuous place in the shop or commercial establishments.
- An employer shall not need or allow any person employed to work at the place of employment for more than 8 hours in any day and 48 hours in any week and the period of work including over time shall not exceed 10.5 hours in any day and 57 hours in week.
- If employees are found working on any holiday or after normal duty hours without proper indent of overtime, action shall be filed against the employer/ Manager as laid down in the Karnataka Shops and Establishments Act, 1961, and Karnataka Shops and Commercial Establishments Rules 1963.
- Women employees shall not be permitted to work beyond 8.00 pm on any day in normal conditions. Though an employer after getting written agreement from a woman

employee may allow her to work between 8.00pm and 6.00am, subject to providing adequate protection to her dignity, honour and safety.

Karnataka Maternity Benefit Rules, 2019

The Karnataka Government laid down the context for execution of crèche facilities by employers, in establishments with more than 50 employees.

However, there might be some execution issues from a practical and administrative perspective.

For example, these rules require that the crèche should be made within the establishment or within 500 meters from the entry of the establishment. This may not be practicable for most establishments given the limited accessibility of real estate in most urban areas.

Changes under Local Shops and Establishments Acts

- States like Kerala, Madhya Pradesh, Andhra Pradesh and Telangana have relieved establishments from renewal of registration under the relevant Shops and Establishment Acts.
- Tamil Nadu has allowed all shops and establishments to be open for 24 hours on all days of the year for a period of three years from the date of the notice (i.e. May 28, 2019). Punjab and Telangana have extended the permission granted to all establishments covered under the concerned Shop and Establishment Act to remain open on all 365 days subject to compliance with various conditions.
- Telangana has given an exclusion to establishments engaged in Information Technology and Information Technology Enabled Services for a duration of five years w.e.f. May 30, 2018 from certain requirements of the SEA, for instance:
 - Opening and closing times;
 - Daily and weekly hours of work, subject to certain conditions.
- Gujrat: The Old Act prescribed that all employees (other than those working at residential hotels or restaurants) will be entitled to wages for overtime, at the rate of 1.5 times their ordinary wages, in case they work for more than 9 hours a day or for more than 48 hours a week.

The New Act states that every worker who is required to work beyond 9 hours a day or 48 hours a week will be entitled to wages at the rate of 2 times his or her ordinary wages for such overtime work. The total number of overtime hours cannot exceed 125 hours in 3 months.

Changes to Maharashtra Shops and Establishments Act in 2019

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (hereinafter referred as 'New Act') has been brought into law in December 2018 and the Maharashtra Shops and Establishments Act 1948 (hereinafter referred as 'Old Act') was repealed.

- The New Act is applicable to establishments employing 10 or more persons. Establishments with less than 10 workers will no longer be regulated under the New Act and will not have to apply for the Registration under New Act. The Old Act did not have any such criteria.
- Women workers with their consensus are now allowed to work during 9:00 pm - 7:00 am. in which satisfactory protection of their dignity, honour and safety, safety from sexual harassment and their transportation from the establishment to the doorstep of their residence. However, the Old Act did not specifically allow women workers to work beyond the working hours.
- Worker will be eligible to avail 8 days casual leave in every year, which shall lapse at the end of the year, if not availed. The worker who has worked for not less than 240 days shall be allowed leave at the rate of 1 day for every 20 days work performed during the previous calendar year. Under the Old Act, workers who have been working for not less than 240 days were eligible to avail 21 days leave. Workers entitled to leave shall be allowed to accumulate leave up to a maximum of 45 days. The Old Act allowed workers to accrue leave up to 42 days.
- An establishment can be kept open for business on all days in a week, but every worker shall be allowed a weekly holiday of at least 24 consecutive hours of rest.

These are liberal changes and the anticipation is that more states will follow the same in the coming years.

Covid 19 Reforms

After the offset of Covid 19, several States implemented changes to Labor Law. These modifications seem to be part of the efforts to attract companies that are planning to move out of China.

- Madhya Pradesh changes to Labor Law
 - Establishment with up to 100 workers can hire according to requirement as and when needed.
 - No registration needed for contractors with 50 labourers
 - No factory inspection for 3 months
 - No inspection & scrutiny for firms with less than 50 workers
 - Third party examination permitted
 - Registration and licences to be allotted within a day.
 - Renewal of factory license once every 10 years.
 - Start-ups need one-time registration and no requirement of renewal.
 - Shift hours raised up to 12 hours in a factory. Earlier it was 8 hours.
 - Overtime of up to 72 hours allowed.
 - Changing shifts: Shops and establishments can function from 6 am till midnight.

- In Rajasthan, Himachal Pradesh and Punjab, the Factories Act was altered to increase the work time from 12 hours a day and 72 hours a week in place of the 8 hours a day and 48 hours a week.
- Rajasthan has revised the Industries Disputes Act to increase the threshold for layoffs and retrenchment to 300 from 100 previously. The limit on membership of the trade union has been changed to 30 percent from 15 per cent.
- Maharashtra has permitted shops/establishments/factories to submit a combined annual returns in lieu of multiple returns under the various labour laws.
- Tamil Nadu has permitted the employment of women in night shifts subject to safeguard measures. In Kerala, the decision was made to provide a new industrial licence within a week after the applications are filed. However, this would be subject to the investor agreeing to complete formalities within a year.

- Working Hour Limit in Karnataka - The Government of Karnataka via notice exempt all factories listed under The Factories Act, 1948 (the "Act") from conforming with the provisions concerning weekly and daily hours limits. The Notification outlines that the daily working hours will be increased from 9 hours to 10 hours and weekly working hours will go up from 48 hours to 60 hours.



Analysis

The culmination of the 44+ labour laws into 4 categories will be a huge positive change towards the betterment of the labour system in India. Though it is not a guarantee that this process will be easy considering the political conflict in the Indian Government.

The changes in the Shops and Establishment Act, has been a welcome change for employers across the country and have been proven beneficial to organizations for a smooth process of workflow.

The placement of contract labour in the Code is very firm which can be clearly seen by defining what does contract labour means. Furthermore, the Code offers welfare facilities for contract labour and precisely puts liability on the principal employer to deliver basic amenities in the organisation for the contract labour during their exact work schedule. It also includes licensing and opportune payment of wages to the contract labour.

Acts like the Payment of Gratuity, Minimum Wages, Employee State Insurance Act etc. recommends the relevant minimum benefits to be made accessible to all the employees. These Acts are a welfare promising statute announced in the interest of the public to safeguard socio-economic justice to employees, to support them after superannuation and to guarantee them a proper standard of life. Therefore, it puts a stricter obligation on the employer to pay the gratuity amount.

The future changes in the labour law regime could turn out to be a welcome development for India given that it would create a simplification in labour compliances which would subsequently result in easier business operations.

However, it would be important to elucidate anonymities and resolve practical implementation issues. With the number of changes on the anvil, human resources professionals and teams can surely expect a busy year ahead.

Conclusion

The Government of India has taken significant steps & measures to protect its labour workforce from any forthcoming accidents or mis-happenings by integrating 13 acts and providing a single Code for the welfare of employees. Similarly, the other combinations of various acts and binding them into four codes, can work in the favour of both the employer and the employees, even though they have a lot of work cut out.

These detailed provisions have been put down for factories, mines, dock, plantations, construction, motor transport, etc. to put forward the duties of employees, working situations, license and registrations, work hours, disability and many more.

These changes are liberal in nature and the anticipation is that the State Government and private institutions implement them and follow the same in the coming years.

